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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,286	08/17/2001	Steven B. McGowan	884.516US1	4742

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EXAMINER

HASHEM, LISA

ART UNIT	PAPER NUMBER
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2645

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/932,286

Applicant(s)

MCGOWAN, STEVEN B.

Examiner

Lisa Hashem

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 34-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 34-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

FINAL DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6 and 34-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. US 2003/0060219 by Parsiokas in view of U.S. Patent No. 6,085,090 by Yee et al, hereinafter Yee.

Regarding claim 1, Parsiokas discloses a sound generation device or interface device (Figure 1, 16; Figure 3, 16) comprising: an audio source (Figure 3: 50, 52) to generate an audio signal (section 0024, lines 1-20); a radio frequency (RF) transmitter or RF modulator (Figure 3, 56), coupled to the audio source, to transmit an RF carrier signal modulated with the audio signal, the RF carrier signal having a specific carrier frequency (section 0025, lines 1-3; section 0026, lines 6-9); and a channel locator controller or scanning receiver to identify an optimum (or available) carrier frequency (Figure 3, 58; section 0030, lines 1-34), wherein the channel locator controller includes a stored program digital computer, the computer to store a database of optimum or available carrier frequencies (section 0028, lines 1-29).

Parsiokas does not disclose the channel locator controller comprises: a geo-position source.

Yee discloses an autonomous interrogatable information and position device (Figure 2, 100) to locate a called party or callee without externally revealing such location, and for allowing

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remote sensor information to be collected and or acted upon (column 2, lines 28-50). The device includes a stored program digital computer (Figure 2, 106), the computer to store a database of positional locations arranged by geo-position (column 3, lines 13-24; column 6, line 62 – column 7, line 10; column 7, lines 42-56; column 9, line 47 – column 10, line 40); and a geo-position source (Figure 2, 140) coupled to the stored program digital computer (Figure 3) to provide a geo-position to the stored program digital computer (column 3, lines 13-24; column 5, lines 31-33; column 6, line 62 – column 7, line 10; column 7, lines 42-56).

Yee further discloses the geo-position source comprises a GPS (Global position system) receiver (Figure 2, 140) (column 3, lines 13-24; column 6, line 62 – column 7, line 10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sound generation device of Parsiokas to include a geo-position source as taught by Yee to provide quality sound reproduction by identifying and using available, non-interfering transmission channels or frequencies on a frequency band. One of ordinary skill in the art would have been lead to make such a modification since a GPS receiver is used to determine a user's geo-position. One or more available transmit frequencies can be accessed via the stored program digital computer based on the geo-position.

Regarding claim 2, the sound generation device recited in claim 1, wherein Yee further discloses the geoposition source comprises a table stored in one of a programmable read only memory (PROM) device or controller (Figure 2, 106), a cellular phone or satellite communication device, a cellular switching center, and an Internet site (column 5, line 31 – column 7, line 10; column 7, lines 42-56).

Regarding claim 3, the sound generation device recited in claim 1, wherein Parsiokas further discloses the channel locator controller further comprises: an out-of-band transmitter (Figure 3, 50) to transmit a channel selection signal comprising an optimum carrier frequency (section 0029, lines 1-23)

Regarding claim 4, the sound generation device recited in claim 1, wherein Yee further discloses the sound generation device further comprises one of a cellular phone or satellite communication device, a GPS (global position system) receiver (Figure 2, 140), a geoposition programming device, a data entry device, and a programmable read only memory (column 3, lines 13-24; column 6, line 62 – column 7, line 10).

Regarding claim 5, the sound generation device recited in claim 1, wherein Parsiokas further discloses the sound generation device further comprises: a channel selection circuit or microcontroller (Figure 3, 60), coupled to the RF transmitter, to select an optimum carrier frequency on which to transmit the RF carrier signal (section 0028, lines 1-29).

Regarding claim 6, the sound generation device recited in claim 1, wherein Parsiokas further discloses the sound generation device comprises equipment from a group comprising an MP3 (Motion Picture Experts Group, Audio Layer 3) player, a compact disk player, a mini-disk player, a micro-disk player, a digital video disk player, a cassette tape player, a radio, a cellular phone, a handheld computer, a portable computer, a television, a video player, a personal digital assistant, an electronic musical instrument, an electronic toy, and a wireless microphone (section 0024, lines 7-13; Figure 3, 52).

Regarding claim 34, please see the rejections of the sound generation device in claims 1 and 3 mentioned above, to reject the sound generation device in claim 34.

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Regarding claims 37 and 38, please see the rejections of the sound generation device in claims 1 and 4 mentioned above, respectively, to reject the sound generation device in claims 37 and 38.

Regarding claims 35-36 and 39-40, please see the rejections of the sound generation device in claims 5 and 6 mentioned above, respectively, to reject the sound generation device in claims 35-36 and 39-40.

Response to Arguments

3. The claim objections listed in the Non-Final Office action filed on 9-30-2004 are withdrawn.

4. In response to applicant's argument that Parsiokas in view of Yee fail to teach or suggest all the claim limitations, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, the apparatus of Parsiokas fails to teach a channel locator controller comprising a geoposition source. However, Parsiokas in view of Yee discloses the claimed invention. Yee clearly discloses a stored program digital computer (Figure 2, 106) and a geoposition source (Figure 2, 120) comprising a GPS receiver (Figure 2, 140). Wherein, the stored program digital computer is provided with preprogrammed operational sequences to execute upon detection of a particular positional location as determined by the GPS receiver

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(Figure 2, 140) and further the stored program digital computer is provided with program memory to store the preprogrammed operational sequences based on the locations arranged by the geoposition source.

The portable entertainment apparatus of Parsiokas can be modified to include a geoposition source (Figure 2, 120) for providing sound quality by identifying and using available, non-interfering transmission channels or frequencies on a frequency band.

5. Applicant's arguments with respect to claims 1-6 and 34-40 have been considered but are moot in view of the new ground(s) of rejection.

6. Accordingly, this action is **FINAL**.

Conclusion

7. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any response to this action should be mailed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Or faxed to:

(703) 872-9306 (for formal communications intended for entry)

Or call:

(571) 272-2600 (for customer service assistance)

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa Hashem whose telephone number is (571) 272-7542. The examiner can normally be reached on M-F 8:30-5:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (571) 272-7547. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-2600.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LH

lh

June 26, 2005


FAN TSANG
SUPERVISORY PATENT EXAMINER
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